ILLINOIS. BD. OF STATE COMMISSIONERS OF PUBLIC CHARITIES

COMMITMENTS TO INSANE HOSPITALS

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Illinois. Board of State Commissioners of Public Charities

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The following discussion of the present law governing commitments to hospitals for the insane in the state of Illinois, and of certain suggested amendments to the same, is from the Sixth Biennial Report of the State Board of Public Charities.

COMMITMENTS TO INSANE HOSPITALS.

We again present, for consideration by the general assembly, the subject of an amendment to the law regulating the mode of commitment of insane persons to hospitals for the insane in this state.

In the original charter of the Illinois state hospital for the insane (at Jacksonville), approved March 1, 1847,* the twelfth, thirteenth and fifteenth sections contain the following provisions:

SEC. 12. The county commissioners' courts of the several counties of this state shall have authority to send to this institution such insane paupers in their county as they may deem proper subjects; * * * * * * * * * * *

SEC. 13. The courts of this state shall have power to commit to this institution any person who, having been arraigned upon a charge of any capital or felonious offense, has been found by the jury to have been and to be insane at the time of such arraignment; * * * * * * * * * * * * * *

SEC. 15. If any person shall apply to the circuit court of any county in this state for the commitment to this institution of any insane person within the jurisdiction of the same, it shall be the duty of such court to inquire into the fact of insanity, as is now provided by law, and if such court shall be satisfied that such person is, by reason of his or her insanity, unsafe to be at large, or is suffering from unkindness, cruelty, hardship, or exposure, it shall thereupon commit such person to this institution; * * * * *

The phrase "as is now provided by law," in the fifteenth section, just quoted, refers to the first section of the fiftieth chapter of the Revised Statutes of 1845, which makes it the duty of the judge of any circuit court in the state to try the question of insanity by jury, in case of proceedings for the appointment of a conservator. But the language of the twelfth section, "authority to send," as contrasted with the word "commit," in the thirteenth and fifteenth sections, seems to imply that trial by jury was contemplated only in the special cases described in these two sections.

In the year 1853,† an act was approved February 12, and in force March 1, entitled, "An act to amend an act entitled 'an act

* See Session Laws, 1847, pp. 52-55.
† See Session Laws, 1853, pp. 241-246.

to establish the Illinois State Hospital for the Insane,'" which confirms the impression derived from an examination of the previous statute. We quote the essential portions of the sixth and seventh sections of this act:

SEC. 6. Before any person shall be committed to the hospital as a patient, except such as have been heretofore legally decided insane, and married women and infants who may be received by the request of the husband of the woman or the parent or guardian of the infant, if the medical superintendent shall be satisfied that they are insane, some respectable person living in the county in which the person alleged to be insane resides, shall file with the judge of the county court, a statement, in writing, substantially as follows:* * * * * The judge of the county court shall thereupon order the clerk of said court to issue subpœnas for the persons named as witnesses, and such other persons as he may think proper, commanding them to appear before him at the time and place specified in the subpœnas, to testify concerning the facts in the case of the person alleged to be insane. He shall also order subpœnas for six suitable persons to serve as jurors in the case, to be present at the same time and place, at least one of whom shall be a physician.

SEC. 7. If, after hearing the evidence, the jury shall be satisfied of the truth of the facts set forth in the statement aforesaid, they shall render to the judge the following verdict substantially: * * * * * * * * * * * *

The objections to this legislation are very apparent. Two different rules are established: one for adult males and unmarried women, and another for married women and infants. The two latter might, under this act, be taken to the hospital, not only without legal process, but without medical inquest, at the will of the husband or father; and the superintendent was empowered to receive them, upon his own judgment that they were insane.

In the year 1865,† a new act went into force February 16, the first three sections of which we quote entire:

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the circuit judges of this state are hereby vested with power to act under and execute the provisions of the act passed on the twelfth of February, eighteen hundred and fifty-three, entitled "An act to amend an act entitled 'an act to establish the Illinois state hospital for the insane,'" in force March first, eighteen hundred and forty-seven, in so far as those provisions confer power upon the judges of county courts; and no trial shall be had of the question of sanity or insanity before any judge or court without the presence or in the absence of the person alleged to be insane. And jurors shall be freeholders and heads of families.

SEC. 2. Whenever application is made to a circuit or county judge, under the provisions of this act and the act to which this is an amendment, for proceedings to inquire into and ascertain the insanity or sanity of any person alleged to be insane, the judge shall order the clerk of the court of which he is judge to issue a writ, requiring the person alleged to be insane to be brought before him, at the time and place appointed for the hearing of the matter; which writ may be directed to the sheriff or any constable of the county, or the person having the custody or charge of the person alleged to be insane, and shall be executed and returned, and the person alleged to be insane brought before the said judge before any jury is sworn, to inquire into the truth of the matters alleged in the petition on which said writ was issued.

SEC. 3. Persons, with reference to whom proceedings may be instituted, for the purpose of deciding the question of sanity or insanity, shall have the right to process for witnesses, and to have witnesses examined before the jury; they shall also have the right to employ counsel or any friend to appear in their behalf, so that a fair trial may be had in the premises; and no resident of the state shall hereafter be admitted into the hospital for the insane, except upon the order of a court or judge, or upon the production of a warrant issued according to the provisions of the act to which this is an amendment.

By the terms of this act, concurrent jurisdiction with the county courts, in trials of insanity, was conferred upon the judges of the circuit courts; and the right to a jury trial, to process for witnesses, and to employ counsel, was conferred upon every person alleged to be insane, in cases where application is made to a court for proceedings to inquire into his insanity. But the law is silent as to cases in which no such application is made, except that it provides that no resident of the state shall hereafter be admitted into the hospital except upon the order of a court or judge.

* The person filing the statement is required to name at least two witnesses, "one of whom shall be a respectable physician."

† See Session Laws, 1865, pp. 85-86.

In 1867, the general assembly passed the famous personal liberty bill,* approved March 5, of which the first two sections are alone material to the history of legislation on this subject. They are as follows:

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That no superintendent, medical director, agent, or other person having the management, supervision or control of the insane hospital at Jacksonville, or of any hospital or asylum for insane and distracted persons in this state, shall receive, detain or keep in custody at such asylum or hospital, any person who has not been declared insane or distracted by a verdict of a jury and the order of a court, as provided by an act of the general assembly of this state, approved February 16, 1865.

SEC. 2. Any person having charge of or the management or control of any hospital for the insane, or any asylum for the insane, in this state, who shall receive, keep or detain any person in such asylum or hospital, against the wishes of such person, without the record or proper certificate of the trial required by the said act of 1865, shall be deemed guilty of a high misdemeanor, and shall be liable to indictment, and, on conviction, be fined not more than one thousand dollars nor less than five hundred dollars, or imprisoned not exceeding one year nor less than three months, or both, in the discretion of the court before which such conviction is had: *Provided*, that one-half of such fine shall be paid to the informant, and the balance shall go to the benefit of the hospital or asylum in which such person was detained.

Finally, in 1874, when the revised statutes were adopted, the following two sections† were inserted in chapter 85, entitled "Lunatics:"

SEC. 22. No superintendent, or other officer or person connected with either of the state hospitals for the insane, or with any hospital or asylum for insane or distracted persons, in this state, shall receive, detain or keep in custody, at such hospital or asylum, any person who shall not have been declared insane by the verdict of a jury, and authorized to be confined by the order of a court of competent jurisdiction; and no trial shall be had of the question of the sanity or insanity of any person before any judge or court, without the presence of the person alleged to be insane.

SEC. 23. If any superintendent, or other officer or person connected with either of the state hospitals for the insane, or with any hospital or asylum for insane or distracted persons, in this state, whether public or private, shall receive or detain any person who has not been declared insane by the verdict of a jury, and whose confinement is not authorized by the order of a court of competent jurisdiction, he shall be confined in the county jail not exceeding one year, or fined not exceeding five hundred dollars, or both, and be liable civilly to the person injured for all damages which he may have sustained; if he be connected with either of the insane hospitals of this state, he shall be discharged from service therein.

The peculiarity of the law in this state is that it absolutely prevents the sending of any insane person (except from the state penitentiaries) to any insane hospital, *whether or not there is any question as to his insanity*, without a formal trial by jury, in open court; and the presence of the person alleged to be insane is made obligatory. We do not believe that a similar law can be found upon the statute books of any other state. The object of the law is, of course, right enough: it is to prevent improper commitments. But in guarding against the danger of one wrong, it goes to an extreme in the opposite direction. The reaction against the law of 1853 is too violent.

In this connexion, we also present the following extract from the "Project of a Law," regulating the legal relations of the insane, adopted by the Association of Medical Superintendents of American Institution for the Insane, at their meeting held in Boston, in the month of June, 1868:

1. Insane persons may be placed in a hospital for the insane by their legal guardians, or by their relatives or friends, in case they have no guardians, but never without the certificate of one or more reputable physicians, after a personal examination, made within one week of the date thereof; and this certificate to be duly acknowledged before some magistrate or judicial officer, who shall certify to the genuineness of the signature, and the respectability of the signer.

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* See Session Laws, 1867, pp. 139–40.

† See R. S., 1874, p. 684.

2. Insane persons may be placed in a hospital, or other suitable place of detention, by order of a magistrate, who, after proper inquisition, shall find that such persons are at large, and dangerous to themselves or others, or require hospital care and treatment, while the fact of their insanity shall be certified by one or more reputable physicians, as specified in the preceding section.

3. Insane persons may be placed in a hospital, by order of any high judicial officer, after the following course of proceedings, viz.: on statement, in writing, of any respectable person, that a certain person is insane, and that the welfare of himself, or of others, requires his restraint, it shall be the duty of the judge to appoint, immediately, a commission, who shall inquire into and report upon the facts of the case. If, in their opinion, it is a suitable case for confinement, the judge shall issue his warrant for such disposition of the insane person as will secure the objects of the measure.

4. The commission provided for in the last section shall be composed of not less than three nor more than four persons, one of whom, at least, shall be a physician, and another a lawyer. In their inquisition they shall hear such evidence as may be offered touching the merits of the case, as well as the statements of the party complained of, or of his counsel. The party shall have seasonable notice of the proceedings, and the judge is authorized to have him placed in suitable custody while the inquisition is pending.

5. On a written statement being addressed, by some respectable person, to any high judicial officer, that a certain person, then confined in a hospital for the insane, is not insane, and is thus unjustly deprived of his liberty, the judge, at his discretion, shall appoint a commission of not less than three, nor more than four persons, one of whom, at least, shall be a physician, and another a lawyer, who shall hear such evidence as may be offered touching the merits of the case, and, without summoning the party to meet them, shall have a personal interview with him, so managed as to prevent him, if possible, from suspecting its objects. They shall report their proceedings to the judge, and if, in their opinion, the party is not insane, the judge shall issue an order for his discharge.

6. If the officers of any hospital shall wish for a judicial examination of a person in their charge, such examination shall be had in the manner provided in the fifth section.

7. The commission provided for in the fifth section shall not be repeated in regard to the same party oftener than once in six months; and in regard to those placed in a hospital under the third section, such commission shall not be appointed within the first six months of their residence therein.

8. Persons placed in a hospital under the first section of this act, may be removed therefrom by the party who placed them in it.

9. Persons placed in a hospital under the second section of this act, may be discharged by the authorities in whom the government of the hospital is vested.

10. All persons whose legal status is that of paupers, may be placed in a hospital for the insane by the municipal authorities who have charge of them, and may be removed by the same authority, the fact of insanity being established as in the first section.

11. On statement, in writing, to any high judicial officer, by some friend of the party, that a certain party placed in a hospital under the third section, is losing his bodily health, and that consequently his welfare would be promoted by his discharge; or that his mental disease has so far changed its character as to render his further confinement unnecessary, the judge shall make suitable inquisition into the merits of the case, and, according to its result, may or may not order the discharge of the party.

12. Persons placed in any hospital for the insane, may be removed therefrom by parties who have become responsible for the payment of their expenses; provided that such obligation was the result of their own free act and accord, and not of the operation of law, and that its terms require the removal of the patient in order to avoid further responsibility.

The bill of rights (Constitution of 1870, article II) contains the following sections:

SEC. 2. No person shall be deprived of his life, liberty or property, without due process of law.

SEC. 5. The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace, by a jury of less than twelve men, may be authorized by law.

SEC. 9. In all criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

We quote the ninth section, because it is practically embodied in the act of 1865, above quoted, and for the purpose of saying, at the outset of the discussion, that a trial for insanity is not in any sense a criminal prosecution. There appears to be some confusion in the mind of many persons as to this point. The forms of trial are so similar to those in criminal cases, as to suggest an essential resemblance which does not exist.

The second and fifth sections do apply to persons alleged to be insane, and render two facts clear: first, that no insane person can be deprived of his liberty (which is done, when he is detained in a hospital for the insane) without due process of law; and,

second, that before being committed for such detention, he has a right to a trial by jury. But it will not be contended that the right to trial by jury may not be waived; nor that, when waived, trial by the court or by a commission is not due process of law.

It may be further remarked, that an insane person may be in such a condition, either through the excitement of mania or the stupidity of dementia, as to be incapable of knowing, asserting or maintaining his rights. When in such condition, it is *prima facie* an absurdity to consult him upon the subject. The constitution prevents his being committed to an insane hospital, even then, without due process of law. But can it be said that his rights are violated, if no trial by jury is had in his case, when he is *non compos mentis*, and therefore not in a state to claim such trial? Is it not more pertinent to say that, in consequence of his condition, he must be regarded as sleeping upon his rights? We quote, as apposite to this case, the well-known maxim, *Vigilantibus, non dormientibus, jura subveniunt.*

The law grants to any friend of a patient to whom there may be danger of wrong done by his commitment to an insane hospital, the right to appear for him, and, on his behalf, to demand that a trial of the question of his sanity or insanity shall be had.

It appears necessary to indicate thus briefly the legal aspect of the question, because the principal objection made to any change in the law of commitment proceeds upon the assumption that a trial by jury, in all cases, is essential to the protection of the liberty of sane people.

But we ask: do sane people need this protection? (1) There is little likelihood that insanity will be alleged, where it does not exist. (2) A sane man is in a condition, should any effort be made to have him declared insane, to resist such effort; and he cannot be deprived of his constitutional right to demand a trial by jury. (3) If wrongfully declared insane, the law affords him his remedy—the writ of *habeas corpus*. (4) But it is not even necessary, in the absence of collusion between the executive officer of the institution and the parties securing the commitment, that he should resort to this writ; the superintendent of any hospital for the insane is forbidden to detain him.

On this point, we quote the following extracts from the statutes:

R. S., 1874, Chap. 38, Sec. 95—

False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall be fined in any sum not exceeding $500, or imprisoned not exceeding one year in the county jail.

R. S., 1874, Chap. 85, Sec. 20—

When any patient shall be restored to reason, he shall have the right to leave the hospital at any time; and if detained therein contrary to his wishes after such restoration, shall have the privilege of a writ of *habeas corpus* at all times, either on his own application, or that of any other person in his behalf. If the patient is discharged on such writ, and if it shall appear that the superintendent has acted in bad faith, or negligently, the superintendent shall pay all the costs of the proceeding. Such superintendent shall, moreover, be liable to a civil action for false imprisonment.

We make the point that the trial of an acute maniac or of an imbecile, by a jury, is no additional protection afforded to a person not insane; but if it were, it is unnecessary. We cannot forbear adding that juries sometimes err in their verdicts.*

In order to the wrongful detention of a sane man in a hospital for the insane, under our present law, there must concur all of the following circumstances, namely: he must be falsely alleged to be insane; a jury must be convinced of his insanity, by sworn testimony, in spite of the evidence introduced by him in rebuttal; and the superintendent of the hospital to which he is committed must either fail to recognize the fact of his insanity or be corruptly influenced to detain him, in disregard of the pains and penalties attaching to such action, and in spite of the right granted by statute to the person wronged to sue for his freedom and secure a second hearing of the case in an unprejudiced court. Is it conceivable that such a combination of circumstances can often occur? We think not. But were the law different, were it so amended as to make the trial by jury optional, at the discretion of the court, and not obligatory, but still reserving to every person alleged to be insane the right to demand a jury, in what respect would the peril of improper commitment be increased? We confess that we are unable to tell.

The inquiry as to the character of our present mode of commitment of lunatics resolves itself into two distinct questions: Is it necessary? and is it expedient? The first branch of the inquiry concerns the protection of persons not insane, but the second, which is of more immediate and far greater importance, relates to its effect upon the insane. To this we now turn our attention.

We assume that there is no intention, in the law, of favoring one class at the expense of another—of protecting the sane, at the cost of the insane. This would be contrary both to equity and to public policy. We assume, in addition, that in legislating for the insane, the primary purpose of the general assembly is to protect their interests and improve their condition. Any matter injected into the law, for the benefit of persons not insane, is subordinate to this intention, and secondary rather than fundamental. The point of our criticism upon the present law is that it virtually reverses this relation, and indicates a confused apprehension of the nature of the evils which it seeks to cure.

* The question submitted to a jury, in a trial for insanity, is the question of the existence of a disease which may be so obscure in its incipient manifestations as to be non-recognizable except by a medical expert. In that case, an ordinary jury is apt to take the ground that the person alleged to be insane is probably crazy, but not crazy enough to be sent to an asylum, that is to say, not crazy enough to receive the benefit of treatment at that stage of the disease when treatment is most advantageous. The absurdity of this view is too obvious for remark. But we deem it our duty to say that the consequences of an error on the part of the jury, in rendering a verdict "not insane," are often more serious and irremediable than if the contrary mistake had been made. For example, an old man, whose reputation for eccentricity was notorious in the community in which he lived, but who was wealthy, and had sons-in-law, was brought before the court in one of our larger cities, and the question of his insanity submitted to a jury. The jury heard the evidence and found that he was not insane. It is possible that they were influenced by the knowledge that he had always been peculiar, and by the fear of doing the man himself a wrong for the pecuniary benefit of his children. However this may have been, the result was, that not long afterward this man went to the railway station and placed his head upon the rails in front of a locomotive in rapid motion, crushing his skull as if it had been an egg-shell. We also consider it important to a correct understanding of the question, to add that if superintendents of hospitals for the insane may be corrupted, so also may physicians in private practice, and that if the physician on a jury in an insane case is purchasable, his price may be less even than that of a superintendent. The remedy provided by the law is not absolute.

Before proceeding to the formal discussion of the effect of the law upon the insane, we desire to call attention, in passing, to the twenty-first section of the eighty-fifth chapter of our Revised Statutes, on lunatics, as follows:

SEC. 21. This act shall not be construed to prevent the committing of any insane pauper to the hospital for the insane of the county in which he may reside, where such hospital is provided.

If we understand aright the section just quoted, it is in the nature of an exception to the rule of obligation of a jury trial; and the introduction of the exception is in effect an admission that the rule is too broad to be practical. If this section is to be understood as establishing two different modes of commitment of insane persons for treatment, one for paupers and another for persons who are not paupers, then it is class legislation in its worst form. If, on the other hand, it is based upon an impression that a wrong is less likely to be done in sending insane paupers to a county poorhouse than in committing insane persons, whether paupers or not, to our state hospitals for the insane, then it has no real foundation.*

At this point in the discussion of the subject, another remark is in place. As has been already said, insane persons are not criminals. An allegation of insanity is not an accusation of crime. Insanity is a disease, and the primary purpose of the law, if intelligent and humane in its intention, must be to secure proper treatment and care for those who suffer from this most terrible of all maladies. The only object of special investigation as to the existence of the disease, in a form different from that in which the existence of any other disease is determined, is to guard against mistakes which might, owing to the peculiarity of its treatment, in hospitals or asylums, under lock and key, involve the liberty of sane people. Any wise law upon the subject of commitment for treatment must provide, first, for a careful discrimination between the sane and the insane, by proper medical examination, under direction of a court; second, for the full protection of the rights of any person who may be falsely alleged to be insane, from improper motives on the part of those who petition the court for his incarceration, such as personal dislike or a desire to obtain the control of property. But after carefully guarding these two points, the law has a third important function to perform, namely, to facilitate, as much as possible, the commitment of those really insane, in order to secure to them the benefits of speedy treatment, which is so essential to their welfare. This our law does not do. On the con-

* We understand and appreciate the force of the position that there is less temptation to wrong an insane pauper, than to wrong a citizen possessed of property. But this does not diminish the positive force of the criticisms made by us above, nor affect the pertinence of the additional remark, that the superintendents of our hospitals, who have at least received an education in the medical schools, and are selected from among a high grade of medical men, are far more able to determine the question of the sanity or insanity of a person alleged to be insane, than are the keepers of our poorhouses; they are also under far greater responsibilities to the public. We do not comprehend why the penalties which attach to them for receiving persons who have not been declared insane by a jury, should not equally attach to those in charge of the county-farms. And, certainly, the chances of unjust detention are far greater in a poorhouse than in a state institution, because seclusion, which is rare in the one, is common enough in the other: in a state institution, it is employed only as a mode of treatment or for purposes of discipline; while, in a poorhouse, it is resorted to from fear of the insane person, or through indifference, ignorance or incapacity. The right of an almshouse-keeper to imprison paupers under his care ought really to be regulated by law, instead of being left to his own discretion or caprice.

trary, it interposes the most formidable obstacles to speedy treatment. It loses sight of what should be its primary purpose, and works the greatest injury to those for whose good it is unquestionably intended.

There is no more clearly recognized principle of medical treatment, generally, than that cures are possible, in proportion as a disease receives attention in time, before it assumes a chronic character. Statistics show that this is remarkably true in insanity; that insanity, if properly and promptly treated, by removing the patient from contact with all causes of irritation, and securing him rest, nutrition, suitable medication (if required), and soothing, agreeable surroundings, is eminently a curable disease. Of patients received into an insane hospital within three months of the original outbreak, three-fourths recover. Delay is the greatest of all dangers which threaten their restoration.

But the Illinois law encourages delay, furnishes every possible motive for delay, and is therefore responsible for a large portion of the chronic insanity of which we hear, on every side, so much complaint. Testimony of the truth of this assertion can be easily furnished, if required, not from superintendents of hospitals alone, but from friends of patients and from the judges of our courts. The great majority of judges in Illinois, who have administered the law, and have studied its practical operation, are agreed in condemning it, and have expressed themselves in favor of its modification. There is little need of testimony, however, because the fact is apparent to any one versed in human nature, that in many instances the friends of a patient, particularly if the patient is a woman, and her speech and conduct, in a state of delirium, are such as to excite prurient or derogatory comments from spectators, will not bring the patient to the court, except as a last resort. There are, too, many persons to whom the fatigue and exposure of a journey to the county-seat, from a distant portion of the county, especially in winter, or if suffering from maniacal exhaustion, are an unnecessary peril. Other patients resist strenuously any attempt to bring them to trial, and the contest exerts an injurious influence upon their mental condition.

Judges do their best to soften the harsher features of the law. They sometimes go to the residence of the patient; but the law does not authorize such an act of humanity.* nor is it always convenient or possible to do it. They more frequently make the trial as private as possible; but the courthouse is a public place, infested by idlers and curiosity-seekers, to whom the manifestations often witnessed in insanity cases are a source of unfeeling amusement. In occasional instances the so-called trial is an absolute farce, being conducted in a manner to cloak its real nature and purpose from the party most nearly concerned and prevent him from knowing that he is on trial. The effect upon him, after his admission to the hospital, is as bad

*Since the trial of a case of insanity away from the courthouse is not authorized, it becomes a question whether such trial, held at the residence of the patient, is not void for want of jurisdiction; and if so, a patient committed to an insane hospital would be wrongly committed. In that case, any designing person, anxious to obtain control of the patient's property, might sue out a writ of habeas corpus, prove that the person named in the writ had not been deprived of his liberty by due process of law, and thus secure his release; after which act of apparent friendship, he might very readily obtain such an ascendency over the patient's mind as to influence all his action with respect to his pecuniary affairs, thus accomplishing indirectly the very wrong against which the law seeks to protect him.

as possible: he believes himself falsely imprisoned, and will not credit the superintendent or physician, when told that he was committed by a court; even if shown the verdict, he insists that it is a forgery.

The conclusion to which the entire argument, as here presented, points, is that the trial by jury, instead of being obligatory, should be optional. This would save the rights of persons falsely alleged to be insane, and would give judges an opportunity to have resort to a jury, at discretion, in difficult and delicate cases. But it would obviate the inconvenience, hardship and wrong of imposing the rule, indiscriminately, upon persons who can derive no benefit from its application, but to whom it is a positive injury. The whole matter of commitment ought to be retained within the control of the courts; but where no jury is demanded nor needed, the courts should have power to appoint medical examiners, to make investigation and report as to the patient's condition. This rule should be uniform in its application, to paupers as well as to other insane persons, and no right of forcible detention should be granted to keepers of county farms which is not equally allowed to superintendents of state institutions.

The foregoing considerations were brought to the attention of the last general assembly, both in our printed report and by hearings and arguments before committees of both houses, in which various distinguished gentlemen, experts in insanity and others, expressed their opinions and related their experience. A bill was introduced, which passed the senate and was on second reading in the house at the time of adjournment, of which the following is a copy, as amended in the senate and by the house committee on judiciary. This bill, as will be observed, goes much farther than a mere attempt to correct the evil here complained of. It is a complete revision of the law respecting lunatics, covering the entire subject treated in chapter 85 of the Revised Statutes, for which it is in fact a substitute. It probably is not perfect, but it is much better than the present chapter on lunatics, and substantially meets with our approval.

A BILL for an Act to Revise the Law in relation to the Commitment and Detention of Lunatics.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That persons legally adjudged to be insane, lunatic or distracted may be received and detained in hospitals or asylums for the insane, owned and controlled either by the state, by any county, or by any individual or corporation, but only upon the terms and conditions hereinafter provided.

§ 2. No insane person residing in this state shall be deprived of his liberty, except by the order of a court, after a proper judicial investigation of the case upon medical and other competent evidence.

§ 3. Every person alleged to be insane, the judge of the county court before whom the case is heard, any relative or friend acting in his behalf, or any respectable citizen, shall, at any stage of the examination into his sanity, have the right to demand that the question be tried by a jury: *Provided*, that this section shall not apply to convicts under sentence for crime, and serving a term of imprisonment in either of the state penitentiaries.

§ 4. In case any resident of this state shall be, or be supposed to be insane or distracted, application may be made in his behalf, by any respectable citizen, to the judge of the circuit or county court, in and for the county in which he resides, for a judicial inquiry as to his mental condition, and for an order of commitment to some hospital or asylum for the insane. The application aforesaid shall be in writing, verified by affidavit, and shall specify whether or not a trial by jury is desired by the applicant.

§ 5. On receipt of said petition, the judge to whom the same may be addressed shall, unless a jury trial is demanded appoint two physicians of good repute for medical skill and moral integrity, residents of the county, to visit and examine the person alleged to be insane, and service on the part of the commissioners herein provided for shall be obligatory upon the persons appointed, under penalty of contempt of court: *Provided*, that no person shall be appointed to make such inquest who does not possess the qualifications required by "An act to regulate the practice of medicine in the state of Illinois," approved

May 29, 1877: *And, provided, further*, that it shall not be lawful for any physician to certify to the insanity of any person for the purpose of committing him to an asylum of which the said physician is either the superintendent, proprietor, an officer, or a regular professional attendant therein.

§ 6. The examining physicians appointed by the court shall, without unnecessary delay, proceed, singly or together, to the residence of the person supposed to be insane, and shall, by personal investigation and inquiry, satisfy themselves fully as to his condition, and report the result of their examination to the court, under oath. The clerk of the court shall furnish to the examining physicians herein provided for a certified copy of the original application required in section 4 of this act, and the said certified copy shall by them, or by one of them, be delivered to the person alleged to be insane; the third section of this act shall be printed in full at the top of the blank on which the said copy is made. Said report shall be recorded by the clerk, and may be in substance as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF..... }

We.....and....., whose names are hereunto appended, practising physicians, residing in the state and county aforesaid, having been appointed by the.....court of said county and state, to make a medical examination of....., supposed to be insane, and having made such examination, do hereby certify that we find the said..... to be (or not to be) insane, and a proper subject for care and treatment in the hospital or asylum for the insane. This opinion is founded on the following grounds, viz: (Here insert facts upon which such opinion was based). To the best of our knowledge and belief, the following is a correct history of the case.

Name, ...; residence, ...; county .....; aged .....; born in .....; has been for ..... years a resident of this state; married, single, widowed, separated or divorced, ...; duration of disease, ...; supposed cause, ...; education, ...; religion, ...; number of attack, ...; age at first attack, ...; date and duration of former attacks, ...; form of disease, ...; complications, ...; natural disposition, ...; intemperate, ...; uses tobacco, ...; habits before attack, ...; general health do., ...; business or domestic cares, ...; domestic relations, ...; old wounds or injuries, ...; recent do., ...; epileptic, ...; violent .....; destructive .....; homicidal, ...; suicidal.....; noisy, ...; what delusions or hallucinations.....; tidy or filthy, ...; depressed or excited, ...; exposed to contagious diseases, ...; condition of bowels, ...; sleep, ...; appetite, ...; general health at present time, ...; what relations have been insane, ...

FEMALE CASES.

Condition of menses, ...; number of labors, ...; natural or complicated, ...; number of children living, ...; age of youngest child, ...; what female complaints, if any, ...; hysterical, ...; other abnormal nervous conditions, ...

And we do further certify that we have delivered to the party examined a certified copy of the original application for this inquest.

[Signed,] .....M. D.
.....M. D.

Subscribed and sworn to before me, ... this ..... day of ..... 18....
[Signed,] .....

And for the services herein required, each of said physicians shall be entitled to a fee equivalent to three dollars ($3.00) for each day's service required in such case, and in addition thereto, to the same mileage now allowed by law to witnesses for attending as witnesses in the circuit court, to be collected from the estate of the patient or paid by the county, as the case may be.

§ 7. Upon receipt of the report of the examining physicians, the court may, if no demand shall have been made for a jury, make and enter of record his order of commitment to some hospital or asylum; or, if not fully satisfied, the judge may make such additional investigation of the case as may seem to him to be necessary or proper, and to that end may, in his discretion, impanel a jury for the trial of the case.

§ 8. A certified copy of the order of commitment shall be attached to the report of the physicians appointed by the court, or to the verdict of the jury, as the case may be, and shall be substantially in the following words:

STATE OF ILLINOIS, } ss.
COUNTY OF ..... }

It is ordered by the ..... court of ..... county, in the state of Illinois, that ....., having been lawfully adjudged to be insane, may be received into any hospital or asylum for the insane in this state, and there detained until recovered or otherwise lawfully discharged.

The said ..... is a resident of ..... county, Illinois, and is in good financial circumstances (or is indigent, or a pauper).

Witness my hand and the seal of the court, this ..... day of ....., 18...

[L. S.] (Signed) ....
Judge of the ..... Court.

§ 9. In case a trial by a jury is demanded, the forms of the procedure may be the same as in other trials, but the jury shall consist of six persons, one of whom shall be a physician. Trials for insanity may be had at the residence of the person supposed to be insane, at the discretion of the court. The case shall be tried in the presence of the person whose

sanity is in question, and he shall have the right to be assisted by counsel, and may challenge jurors as in civil cases. The court may, for good cause, continue the case from time to time.

§ 10. The jury shall inquire also into the financial condition of the supposed lunatic, and if he has been maintained, in a county almshouse or elsewhere, at the expense of the county or of any municipal corporation, he shall be deemed and termed a pauper. If he has not been so maintained, but his estate is insufficient to meet the lawful charges accruing for maintenance, clothing, transportation and other petty expenses, while an inmate of a state hospital or asylum for the insane, he shall be described as indigent.

§ 11. The jury shall, after hearing the evidence, render their verdict in writing, signed by them, which verdict may be substantially in form as follows:

STATE OF ILLINOIS, } ss.
COUNTY OF..... }

We, the undersigned, jurors in the case of ...., having heard the evidence in the case, are satisfied that the said .... is insane, and is a fit person to be sent to a hospital or asylum for the insane; that he is a resident of the state of Illinois and county of .....; that he is (or is not) in indigent circumstances, (or a pauper); and that the history of the case hereto appended is correct, to the best of our knowledge and belief.

The history herein referred to shall be prepared by the physician upon the jury, and signed by him, and also by the medical witness or witnesses in the case, and shall be similar in form to that prescribed in the sixth section of this act.

§ 12. Upon the return of the verdict, the same shall be recorded at large by the clerk, and if it appears that the person is insane and a fit person to be sent to a hospital or asylum for the insane, the court shall make and enter an order of commitment, as required by the eighth section of this act.

§ 13. No order of commitment shall be valid for more than thirty days from the date of its issue.

§ 14. For the purpose of examination into the sanity of persons alleged to be insane, the circuit and county courts of this state shall always be open.

§ 15. It shall not be lawful for any county to receive and detain any insane person in any county almshouse or other receptacle for the pauper insane, without first having made suitable provision for the care of such persons, in respect to quarters, beds and bedding, heating, ventilation, cleanliness, security, comfort and personal attention.

§ 16. No private person or corporation shall receive, detain or care for any insane person for hire, unless authorized so to do by an order of the county court of the county in which said person or corporation resides; and it shall be the duty of the judge of the court, before granting such order, to satisfy himself, by personal inspection or otherwise, that the provision made for the care of such insane person or persons is in all respects suitable and sufficient. But no such order, once granted, shall be revoked or annulled, except for sufficient cause, nor without previous notice to the party concerned, who shall have the right to defend himself as in other civil suits: *Provided*, that the voluntary discontinuance to receive and care for insane patients, or the removal of the establishment to any other locality, shall of itself vacate the said order.

§ 17. When any person shall have been declared to be insane, the clerk of the court shall, at the request of the friends, forward a copy of the papers in the case, namely, the certificate of the examining physicians, or the verdict of the jury, as the case may be, together with the history of the case and the order of commitment, to the superintendent of the state hospital for the insane, in and for the district in which the patient resides, and shall make application for his admission, but no person having any contagious or infectious disease shall be received into any state hospital for the insane.

§ 18. Upon receipt of the reply of the superintendent, (which shall be made without delay), the clerk shall, if the patient be admitted, issue a warrant directed to the sheriff or any other suitable person, preferring some relative of the insane person when desired, commanding him to arrest such insane person and convey him to the hospital; and if the clerk is satisfied that it is necessary, he may authorize an assistant to be employed. Upon receiving the patient, the superintendent shall endorse upon said warrant his receipt acknowledging the delivery of said patient, and the said warrant, with the said receipt, shall be returned to the clerk, to be filed by him with the other papers relating to the case.

§ 19. No patient residing in this state shall be admitted into any hospital or asylum for the insane, public or private, except upon such warrant, addressed to the person by whom such person is received; but this section shall not be construed to forbid the temporary reception, from motives of humanity, of persons obviously insane, who may have been irregularly brought to any asylum, and their detention until a sufficient time shall have elapsed for the cure of such irregularity.

§ 20. If the court shall deem it necessary, pending proceedings and previous to a decision of the case, or after the issue of an order of commitment, and pending admission to some hospital or asylum, temporarily to restrain of his liberty the person alleged to be insane, then the court shall make such order in that behalf as the case may require, and the same being entered of record, a copy thereof, certified by the clerk, shall authorize such person to be temporarily detained by the sheriff, jailor or other suitable person to whom the same shall be directed.

§ 21. When a person, not a pauper, or indigent, is alleged to be insane, and is found, upon inquiry, not to be insane, the costs of the proceeding, including the fees of the jury, if any, shall be paid by the petitioner, and judgment may be awarded against him therefor. If such person is found to be insane, such costs shall be paid by his guardian, conservator or relatives, as the court may direct. If the person alleged to be insane is indigent or a pauper, the cost of the proceeding, including the fees of the jury, if any, shall be paid out of the county treasury: *Provided*, if such person is found not to be insane, the court may, in its discretion, award the costs against the petitioner.

§ 22. The expense of conveying an insane person, who is indigent or a pauper, to the hospital, shall be paid by the county in which he resides, and that of any other patient by his guardian, conservator or relatives; and in no case shall any such expense be paid by the state, or out of any funds for the insane. The fees of the sheriff for conveying any person to the hospital shall be the same as for conveying convicts to the penitentiary.

§ 23. All costs incurred by any state hospital for the insane, on account of clothing and other individual expenses, or on account of the removal or burial of any patient, shall be defrayed, in case the patient on whose account such cost is incurred is indigent or a pauper, by the county of which the said patient is a resident; but in case the said patient is not indigent nor a pauper, then the cost aforesaid shall be paid by the guardian, conservator or relatives of said patient: *Provided*, that no charge shall be made for the board and treatment of any insane resident of this state in any state hospital for the insane. The medical superintendent of any state hospital for the insane shall be authorized to use his medical judgment as to the character and amount of clothing and underwear necessary to be furnished to patients under his care, in accordance with the season of the year and the degree of exposure to which said patient may be subjected, but he shall, as nearly as possible, furnish clothing of similar cost and character to all patients who are indigent or paupers.

§ 24. No state hospital for the insane shall charge any county or any individual, for the expenses hereinbefore mentioned, any more than the amount actually paid out by said hospital, with the addition of twenty per cent. to cover freight, losses, and the cost of mending in the hospital.

§ 25. The just and reasonable bills of a state hospital for the insane against any county shall be audited and paid by the county board in such manner that the hospital shall receive the full amount of said bills as allowed, and any losses incurred by the hospital, on account of depreciated warrants or discounts, shall be charged to the county. If any county shall at any time be indebted to any state hospital in any amount, and shall have neglected to pay the amount so due for any period of time exceeding one year, it shall be the duty of the trustees of said hospital to apply to the circuit court in and for said county for a mandamus upon the county treasurer for the amount due, and upon proof of the account, the court shall issue a writ of mandamus, and the county treasurer shall pay the same at sight out of any moneys belonging to the county not otherwise appropriated.

§ 26. If any patient, not indigent nor a pauper, shall be admitted to any state hospital for the insane, then one or more persons, his relatives or friends, shall, upon his admission, execute a bond conditioned as follows:

STATE OF ILLINOIS, }
COUNTY OF .... } ss.

Know all men by these presents, that we .... and ...., of the county and state aforesaid, are held and firmly bound unto the trustees of the Illinois ..... hospital for the insane, in the sum of two hundred dollars ($200), for the payment of which we jointly and severally bind ourselves by these presents. The condition of this obligation is such, that whereas ...., an insane person of the county and state aforesaid, has been admitted as a patient into said hospital for the insane; now, therefore, if we shall find such patient in suitable and sufficient clothing while .... may remain in said hospital, and shall remove ..... when required to do so by the trustees, and shall promptly pay all reasonable and lawful charges accruing for expenses incurred by said hospital on account of said patient, including the expense of his removal or burial, in case of his discharge or death, then this obligation to be void; otherwise to remain in full force.

Witness our hands and seals, this ..... day of ....., A. D. 18...

(Signed,) ..... [L. S.]
..... [L. S.]

§ 27. It shall be the duty of the county clerk to certify to the financial responsibility of the parties by whom the bonds aforesaid may be signed; and no county shall evade its responsibility by wilfully or negligently certifying to the solvency of such signers, when they are in fact insolvent; and if suit shall be brought upon any bond as aforesaid, and it shall appear that the amount due cannot be collected, on account of the insolvency of the signers, then the said amount so due shall be payable by the county of which the patient may be a resident.

§ 28. Whenever the trustees of any state hospital for the insane shall order any patient discharged, the superintendent shall in every case at once notify the clerk of the county court of the proper county, and if the patient's friends have given the bond required in the preceding section, he shall also notify all persons who signed the said bond, and request the removal of the patient. If such patient be not removed within thirty days after such notice is received, then the superintendent may return him to the place whence he came, and the reasonable expenses of his return may be recovered by suit upon the bond; but in case of paupers or indigent insane, such expenses shall be paid by the proper county.

§ 29. No person admitted into any hospital or asylum for the insane shall be detained therein after his recovery, or if not insane; and any superintendent of any hospital or asylum for the insane, who shall knowingly or negligently or corruptly detain any person not insane, contrary to such person's wishes, shall be guilty of false imprisonment.

§ 30. On the petition of any respectable person, addressed to the judge of any circuit court in this state, representing that a certain person then confined in a hospital or asylum for the insane, is not insane, and is unjustly deprived of his liberty, the judge shall appoint a commission of three persons, one of whom at least shall be a physician, and another a lawyer, who shall hear such evidence as may be offered, touching the merits of the case, and without summoning the party to meet them, shall have a personal interview with him, so managed as to prevent him, if possible, from suspecting its object. They shall report their proceedings to the judge, and if, in their opinion, the party is not insane, the judge shall issue an order for his discharge. Such commission shall not be appointed within three months after the admission of the patient, nor be repeated at any interval of less than six months' duration.

§ 31. If the officers of any hospital shall wish for a judicial examination of a person in their charge, such examination shall be had in the manner provided in the preceding section.

§ 32. Insane persons not residents of this state may be admitted into private asylums for the insane in this state, on compliance with the provisions regulating the commitment of insane persons, in the statutes of the state of which any such person is a resident.

§ 33. Whenever provision shall have been made for the proper hospital treatment of insane convicts in the penitentiaries of this state, within the walls of said penitentiaries, or either of them, then all insane convicts, now in the state hospitals for the insane, shall be transferred to said hospital specially provided for insane convicts.

§ 34. The execution of this act is entrusted to the state commissioners of public charities, who are, for this purpose, granted the following powers, usually resident in commissioners of lunacy, namely: the power to visit and inspect all places where insane persons are or may be confined; the power to require statistical and other reports from all persons, whether official or not, who have any insane under their care; and it shall be their duty to institute proceedings for the transfer to a state hospital for the insane of all insane persons who are not properly cared for where they may be, and to proceed against any county or individual, criminally or otherwise, for wilful or flagrant neglect of insane persons under their care; and it shall be their further duty to take proceedings to liberate all persons who are restrained of their liberty on the pretense of insanity, and who are not, in the opinion of said commissioners, insane.

§ 35. An act entitled "An act to revise the law in relation to the commitment and detention of lunaties," approved March 21, 1874, and contained in chapter 85 of the Revised Statutes, for which the present act is a substitute, is hereby repealed.

It only remains to add, that the Illinois State Medical Society sent a special messenger to Springfield, during the pendency of the bill here quoted, with a copy of certain resolutions adopted by that society, at Lincoln, which were formally laid before the house of representatives by the speaker.* These resolutions were as follows:

Resolved, As the sense of the Illinois State Medical Society, that the forms of law adopted for establishing a question of crime are unsuited to the determination of a question of insanity, on account of the exposure to public curiosity and the supposed disgrace attending a trial by jury, and that this mode of procedure should be reserved for the cases in which it is requested by the parties who are suspected of being insane, or by the friends of such parties, and who are desirous of establishing, by such means, the mental soundness of the person in question.

Resolved, That the bill now pending in the legislature of the state of Illinois, entitled, "An act to revise the law in relation to the commitment and detention of lunatics," meets with the hearty approval of the Illinois State Medical Society; and that in the interest of humanity, and for the credit of our state, this society respectfully prays that the legislature of the state of Illinois will speedily adopt the provisions of said bill as the law of our state.

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* See House Journal, 1879, p. 929.